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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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In the Matters of	)	FEDERAL COMMUNICATIONS COMMISSION
	)	OFFICE OF THE SECRETARY
Telecommunications Services	)	CS Docket No. 95-184
Inside Wiring	)	
	)	
Customer Premises Equipment	)	
	)	
Implementation of the Cable Television	)	
Consumer Protection and Competition	)	MM Docket No. 92-260
Act of 1992	)	
	)	
Cable Home Wiring	)	

**REPLY COMMENTS OF TELEBEAM, INC.**

TeleBeam, Inc. ("TeleBeam"), by its attorney, hereby submits its reply comments in response to the *Further Notice of Proposed Rulemaking* ("FNPRM") released by the Commission on August 28, 1997 in this proceeding.<sup>1</sup>

TeleBeam is an alternative multichannel video programming distributor ("MVPD") that competes directly with incumbent cable operators in and around State College, Pennsylvania. The State College area is populated in large numbers by students and faculty at The Pennsylvania State University, many of whom live in multiple dwelling units ("MDUs").<sup>2</sup> Thus access to MDU properties has been and continues to be the most critical legal and business issue facing TeleBeam and other similarly situated competitors to cable.

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<sup>1/</sup> *Telecommunications Services: Inside Wiring; Customer Services Equipment*, CS Docket No. 95-184, FCC 97-304 (rel. Aug. 28, 1997)[hereinafter cited as "FNPRM"].

<sup>2/</sup> TeleBeam delivers service to MDU buildings through a hybrid of cable and microwave (18 GHz) technology.

For the reasons set forth in the initial comments submitted by The Wireless Cable Association International, Inc. with respect to the *FNPRM*, TeleBeam generally supports the Commission's proposed rules for disposition of "home run" wiring upon termination of the incumbent cable operator's service, and urges the Commission to issue final rules as quickly as possible. It has been TeleBeam's experience that the absence of clear guidance from the Commission on this issue has led to substantial confusion among MDU owners and thus made it more difficult for TeleBeam to obtain fair and equitable access to MDU properties in a timely manner. It cannot be overemphasized that in the MDU environment time is of the essence for alternative MVPDs: since MDU owners generally are unwilling to even consider taking service from new providers if there is any chance that service to tenants will be delayed for even a short length of time. Firm Commission timetables for transitioning service to a new service provider will be a helpful first step toward eliminating this problem.<sup>3</sup>

TeleBeam also believes, however, that the Commission's proposed rules will not have their intended effect if incumbent cable operators are allowed to forestall competition indefinitely merely by claiming a legally enforceable right to remain on MDU property. At the heart of the problem

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<sup>3/</sup> TeleBeam submits, however, that ultimately the Commission must move toward a regulatory framework that eliminates opportunities for incumbent cable operators to remove their wiring and thereby force competitors to postwire MDU property in order to obtain access to MDU subscribers. The strong aversion of MDU owners to postwiring is now well documented and represents the single most important reason why cable's competitors are severely disadvantaged in the MDU environment. Moreover, allowing removal of home run wiring is an extremely inefficient solution where, for example, a displaced former incumbent elects removal but is asked to provide service six months or a year after being displaced. In such a situation, the incumbent in effect would be required to postwire a building which it had initially wired for service in the first place. This duplication of effort clearly does not serve the interests of MDU owners or their tenants. Accordingly, a regulatory scheme that encourages competing providers to transfer ownership of home run wiring on fair and equitable terms is a far more desirable result.

here is Pennsylvania's mandatory access statute, which gives a cable operator a right of access where the tenant has requested service and provides that the operator shall retain ownership of all wiring and equipment used in any installations on MDU property.<sup>4</sup> However, the statute is silent as to whether an incumbent cable operator has any right to remain on MDU property after the operator's service is no longer requested.<sup>5</sup> The ambiguity of the statute on this point thus gives incumbent cable operators in Pennsylvania an opportunity to assert a clear right to remain on MDU property after termination of service, simply because the language of the statute itself does not preclude them from doing so.

Further contributing to the problem is the fact that incumbent cable operators may be the beneficiaries of long-term service contracts with MDU owners which also are unclear as to what happens when the MDU owner terminates the operator's service. Indeed, since many of these contracts were drafted before the advent of competition, the parties often did not even consider that there may come a time when the MDU owner might wish to switch service providers. These contracts can preclude competition absent postwiring of a building. Given the aversion of MDU owners toward postwiring, such contracts defeat competition even though the MDU owner no longer wants the incumbent's service.

TeleBeam thus submits that the Commission's proposed rules should be modified to require an incumbent cable operator to establish its legally enforceable right to remain on MDU property before the Commission's relevant notice period expires. The Commission should also make it absolutely clear that its notice periods will be tolled *only* if the incumbent obtains relief before the

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<sup>4/</sup> 68 P.S. § 250.503-B.

<sup>5/</sup> *Id.*

notice period elapses; the incumbent cannot toll the notice period merely by claiming that it has a legal right to remain. This modification will cause no prejudice to incumbent cable operators, who have substantial resources and, in TeleBeam's experience, are more than capable of pursuing injunctive relief aggressively within the 90 or 60-day notice periods proposed by the Commission.<sup>6</sup> Moreover, a requirement that the incumbent obtain rather than merely claim relief within the relevant notice period will prevent incumbents from delaying competitive entry indefinitely pending endless litigation over the incumbent's rights under state law.

Also, consistent with what the Commission has proposed in footnote 100 of the *FNPRM*, the Commission's proposed rules should clearly state that an incumbent cable operator cannot assert a legal right to remain under any circumstances in an MDU building or unit where an MDU owner or tenant has not requested the incumbent's service. Simply put, where a provider's service is no longer wanted, the only reason for an incumbent to maintain its facilities on MDU property is to block entry by its competitor. If the Commission is to remain true to its objectives in this proceeding, it must make a strong and clear statement that such conduct will not be tolerated.

TeleBeam also supports moving the demarcation point for cable home wiring away from the subscriber's unit and toward the junction box where the current "12 inch" demarcation point is physically inaccessible. This will facilitate efficient "switchovers" from one service provider to another, and will provide the type of environment that will allow multiple providers to coexist in the same building.

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<sup>6</sup> For example, in currently pending litigation between TCI of Pennsylvania and an MDU owner that has switched from TCI to TeleBeam, TCI has been successful in obtaining court hearings within days of submitting requests for temporary injunctions. *TCI of Pennsylvania, Inc. v. Glenn Miller, Janet Heim and Keystone Real Estate Group*, Docket No. 80-HBG-97, Brief of Appellees at 5-6 (Sup.Ct. Pa. 1997).

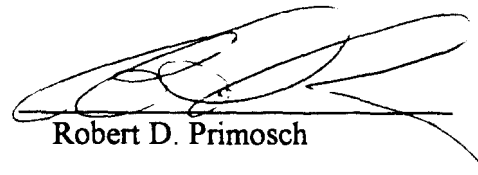
Finally, TeleBeam supports shortening the proposed time frames for unit-by-unit disposition of home run wiring, as proposed by WCA and the Independent Cable & Telecommunications Association. Under the Commission's current proposal, incumbents have 90 days lead time to "lock up" existing tenants with long-term, discounted service plans before a competitor even arrives on the property. It has been TeleBeam's experience that this provides incumbents with an insuperable marketing advantage that nullifies any advantages gained by alternative MVPDs under the Commission's rules. TeleBeam thus urges the Commission to take market realities into account and shorten its timetables accordingly.

WHEREFORE, for the reasons set forth herein, TeleBeam, Inc. requests that the Commission adopt the rules proposed in the *FNPRM* with the modifications recommended in these comments.

Respectfully submitted,

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